IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, CIVIL JURISDICTION

FAMILY COURT APPEAL NO.75 OF 2004
WITH
CIVIL APPLICATION NO.113 OF 2004
AND
CIVIL APPLICATION NO.144 OF 2004

Sau.Sunanda Mahendra Thakur.....Appellant

Versus

Shri Mahendra Sahebrao Thakur....Respondent

Mr. S.S. Hardikar, for the Appellant.
Mr. Prem S. Gidwani, for the respondent.

CORAM: F.I. REBELLO & ANOOP V.MOHTA, JJ.
DATE : 26th August, 2004

P.C.

. The present appeal by the appellant is to challenge the order dated 17th April, 2004 whereby the application by the appellant wife under Section 24 of the Hindu Marriage Act for interim maintenance has been rejected.

2. A preliminary objection is raised on behalf of the respondent-husband that against an order under Section 24 rejecting an application for maintenance Appeal is not maintainable. Learned Counsel has placed reliance on the judgment of a Division Bench of this Court in Sunil Hansraj Gupta vs. Payal Sunil Gupta, 1991 Mh.L.J. 737. On the facts of that case an appeal had been preferred by the husband against the order passed by the Family Court directing payment of maintenance to his wife. On considering the provisions of Section 28 of the Hindu Marriage Act the learned Division Bench observed as under:-

> The object of the Family Courts Act is to provide speedy disposal of matrimonial disputes. With this object in mind, right of appeal against an

interlocutory order is taken away. Mr. Rane does not dispute the object being laudable but in the second breath urged that impugned order is not an interlocutory order. We are unable to agree with later of submission. This provision in our opinion, is also on par with section 28(2) of the H.M. Act. Unamended provisions of Section 28 of the H.M. Act barred any appeal against award of costs only but every judgment and/or order passed under H.M. Act was appealable. This resulted into filing of an appeal against every order except order of costs. Result thereof was that proceeding under the H.M. Act could not see the end within a reasonable time. The Parliament, therefore, in the year 1976 amended section 28 by substituting new provision. Amended section 28(2) totally bars an appeal against an order passed under section 24 of the H.M. Act. This sub-section bars an appeal against an interim order passed under Sections 25 and 26 of the H.M.Act. Exclusion of section 24 from sub-section (2) of section 28 of the H.M. Act is very significant. If Mr. Rane's argument is to be accepted it must follow that an order passed under section 24 of the Act is final adjudication of rights and liabilities and not an interlocutory order and appeal would lie against such order under Section 19(1) of the Family Courts Act. What has been denied under section 28(2) of the H.M. Act will stand revived under Section 19(1) of the Family Courts Act. This submission in our opinion, would, therefore, clearly defeat the object of the Family Courts Act. In this view of the matter,

we are of the opinion, that the view which we have taken, in respect of the interlocutory order under sections 24, 25 and 26 of the M.H. Act is the only correct interpretation of section 19(1) of the Family Courts Act and consequently, no appeal would lie to the High Court under section 19(1) of the Act, against such interlocutory orders. Our above conclusion would be in consonance with the objects of the Family Courts Act and equally consistent with section 28(2) of the H.M. Act."

2. On behalf of the appellant learned Counsel contends that this can be applied only in respect of an order awarding interim maintenance and not to a case where no maintenance is granted. We are afraid the judgment cannot be interpreted in that manner. We are, however, unable to agree with the distinction sought to be made by the learned Counsel. The section will have to be read as a whole and would cover both cases where maintenance is awarded as also in those cases where maintenance is rejected.

3. In the light of that Appeal is not maintainable. Hence Appeal dismissed. It is made clear that we have not decided the matter on merits. It will be open to the appellant, if in law, she is entitled to take out appropriate proceedings.

4. As the Appeal itself is dismissed Civil Applications have become infructuous. Both the Civil Applications are disposed of as infructuous.

Authenticated copy be supplied to the parties.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA, J.)